

Ser. No. 10/825,574
Pre-Appeal Brief dated October 14, 2008

In the Advisory Action, Examiner Hu further asserted that no two races are the same because athletes can pick different points of travel along a course, such as one athlete using an apex or outside point to pass someone, and because physiological and weather conditions may not be exactly the same.

It is indicative of the weakness of this rejection that Examiner Hu needs to resort to a claim interpretation that no reasonable person would make. However, even if one entertains Examiner Hu's assertions, such assertions still do not factually teach or suggest or render obvious comparing performance data on a first course to performance data on a second course that is located in a different geographic area than the first course. For example, even though athletes may race along different points along the same course, performance data of the athletes (according to the cited references) are still compared in regards to the same course, not separate courses located in different geographic areas. If one athlete competes a little to the right and another athlete competes a little to the left, both athletes are still running on the same course. Furthermore, differences in physiological conditions and weather conditions do not change the fact that different performance data are still compared in reference to one same course, according to the cited references. Physiological conditions and weather conditions do not change the geographical location of a course.

Accordingly, Applicants believe that Examiner Hu's analysis with respect to the cited references is factually incorrect.

IV. CLEAR LEGAL DEFICIENCY OF THE REJECTION

"The key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious." MPEP § 2141, III. The Examiner has not provided adequate factual findings or rationale to support clear articulated reason(s) to reject the claims under the legal standard of obviousness. Specifically, the Examiner has failed to provide support for at least comparing a first performance along a first course to a second performance along a second course in which the second course is in a different geographic area than the first

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course. Accordingly, the combination of the references along with the assertions of the Examiner do not render the Applicants' claims unpatentable.

V. CONCLUSION

For the foregoing reasons, Applicants submit that all of the pending claims should be allowed.

Respectfully submitted,



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